



**Michigan Supreme Court
State Court Administrative Office**

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John D. Ferry, Jr., State Court Administrator

Memorandum

DATE: April 29, 2004

TO: Chief Circuit Judges
Family Division Judges

cc: Court Administrators, Friends of the Court, Referees, Juvenile Registers

FROM: John D. Ferry, Jr.

RE: Administrative Memorandum 2004-05
Procedure for Implementation of MCR 2.004 – Incarcerated Parties

MCR 2.004¹ effective January 1, 2003, sets forth the requirements for allowing incarcerated parties to participate in domestic relations actions² involving their minor children and other actions involving the custody, guardianship, neglect, or foster care placement of minor children, or the termination of parental rights.³ Courts must use the following procedure for all domestic relations actions involving minor children where the non-moving party is incarcerated under the jurisdiction of the Department of Corrections⁴ (DOC).

¹This rule on incarcerated parties was originally designated as MCR 3.220. The rule is now designated as MCR 2.004 to reflect its application to several types of actions outside of domestic relations. The proposal for the rule came about through the settlement agreement entered in the recent Court of Claims case, *Cain v Michigan Dep't of Corrections*, 88-61119-AZ, 93-15000- CM, and 96-16341-CM. As part of the settlement, the Department of Corrections consented not to oppose a court rule that would establish a special procedure for ensuring prisoners receive notice of court proceedings involving their minor children.

²MCR 3.201 defines domestic relations actions to include actions for divorce, separate maintenance, the annulment of marriage, the affirmation of marriage, paternity, Family Support Act actions, Child Custody Act actions, parenting time actions and proceedings that are ancillary or subsequent to those actions relating to the custody, parenting time, or support of minors or a spouse or former spouse.

³Since the foster care placement of minor children is a general dispositional option under the Juvenile Code, some juvenile delinquency and other types of cases may be implicated by this rule. Since the termination of parental rights is covered generally, cases involving adoption or the safe delivery of newborns may also be implicated.

⁴The DOC understands the term "incarcerated" to refer to someone housed in a prison or jail. Halfway houses and other places of semi-detention within the community are not considered by DOC to be places of incarceration. It is possible, although rare, for an individual to be incarcerated under the jurisdiction of the DOC and yet not be incarcerated within this state. A prisoner may be housed in a federal penitentiary when it is necessary for the inmate's protection. On occasion, a person is incarcerated in Michigan and yet is not under the jurisdiction of the DOC. One scenario where this occurs is when someone convicted elsewhere is placed in a Michigan prison through the federal witness protection program.

This memorandum supercedes Administrative Memorandum 2003-02.

Filing Requirements

1. The party seeking an order regarding a minor child is required to contact the Department of Corrections to confirm the incarceration, the incarcerated party's prisoner identification number, and the incarcerated party's location. This prisoner's current location is available by referencing the Offender Tracking Information System (OTIS) at <http://www.state.mi.us/mdoc/asp/otis2.html>.⁵
2. The moving party is required to serve the incarcerated person with the petition or motion seeking an order regarding the minor child and file proof with the court that the papers were served.
3. The party⁶ seeking the order regarding a minor child is required to state in the petition or motion that a party is incarcerated and to provide the party's prison number and location. The caption of the petition or motion is required to state that a telephonic hearing is required by MCR 2.004.

Court Requirements

1. The court must determine whether all the filing requirements have been met. If the court is satisfied with the filings, it shall issue an order (Form MC286) requesting the DOC or the facility where the party is located, if it is not a department facility,⁷ to allow that party to participate with the court or its designee by way of a non-collect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting.⁸
2. The order is required to include the date and time for the hearing, the prisoner's name and prisoner identification number, and must be served⁹ by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides.

⁵Another option would be to contact the DOC Central Office, Records Office at 517-373-0284.

⁶A court or a friend of the court (FOC) may be considered a party under the rule. If the court or FOC is requesting an order under the rule, it should determine the status of one or more individuals before initiating proceedings. In domestic relations cases involving children, the parties have a statutory obligation to notify the FOC of changes in their address. Therefore, the FOC should be aware of a person's DOC status without the need to take additional action to make the determination. Because a person may be moved within the DOC system, the FOC should take additional action to confirm the location of a person it knows is under the jurisdiction of the DOC.

⁷ Non-DOC facilities that may be implicated by this rule include out-of-state prisons in which a prisoner under the jurisdiction of the DOC has been placed, The Michigan Youth Correctional Facility at Baldwin, and the Huron Valley Center.

⁸ FOCs do not hold hearings or adjudicate on their own. However, the FOC may initiate proceedings that result in adjudicative hearings or meetings. Examples of proceedings that occur as a result of FOC actions include referee hearings, joint meetings after which the person conducting the joint meeting makes a recommendation for an order, and meetings with an investigator after which the investigator makes a recommendation for an order.

⁹ MCR 2.107 generally covers service and filing of pleadings and other papers.

3. All court documents or correspondence mailed to the incarcerated party concerning any matter covered by MCR 2.004 are required to include the name and the prisoner identification number of the incarcerated party on the envelope.
4. In the interest of safety and expense, when possible, this procedure should be used instead of issuing a writ to have the prisoner present at the court.

Scheduling Requirements

1. A hearing involving an incarcerated party under MCR 2.004, should be scheduled in the morning between the hours of 8:00 a.m. and 11:00 a.m. in the interest of prison safety and efficiency.
2. If the court schedules multiple hearings at the same time, any hearing involving an incarcerated party under MCR 2.004 shall be given “first-call” status. If the court is running behind schedule, the court is required to call the facility within ten minutes of the scheduled time to notify it of scheduling problems. *See Appendix for contact list sorted by correctional facility. This is also available online at www.michigan.gov/corrections.*
3. The DOC is not required to hold a prisoner more than 30 minutes after the scheduled hearing time. If the incarcerated party is no longer available due to the court’s failure to begin the hearing at the scheduled time, it shall not be determined to be the incarcerated party’s fault and shall not be used in determining the outcome of the motion/petition, nor for any contempt proceeding.
4. If the court fails to keep the scheduled hearing time, it is required to issue another order requesting the DOC or the facility where the party is located to allow the incarcerated party to participate in the court proceedings. The hearing shall be scheduled at the nearest available date and time, allowing proper service on the incarcerated party and the DOC.
5. The rule does not indicate who is to place the call and pay for it. However, the understanding following the settlement agreement in *Cain* was that the DOC will make the call. This understanding does not prohibit the court from determining that one or both of the parties should be responsible for the cost of the call.

Call Requirements

1. The court is required to determine whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate, and whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party’s access to the court is protected, and whether the incarcerated party is capable of self-representation, if that is the party’s choice.

2. The court is also required to determine how the incarcerated party can continue to communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls.
3. The court should also determine the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate.

The rule does not require appointment of counsel in matters for which appointment is not already required by law. Because the rule does not specify that the prisoner is entitled to additional telephone calls after the first call, the court should make appropriate arrangements with the prison, which may include requiring one or both of the parties to pay the costs of any future calls.

Final Orders

1. The court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in MCR 2.004. This does not apply if the incarcerated party actually participates in a telephone call or if the court determines that immediate action is necessary on a temporary basis to protect the minor child.
2. The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.

Courts and court agencies with questions concerning this memorandum may contact Dawn Childress at Childressd@courts.mi.gov or Steve Capps at Cappss@courts.mi.gov , 517-373-4835.

Institutional Litigation Coordinators

<u>Institution/</u>	<u>TX Number</u>	<u>Warden</u>	<u>Lit Coord. & TX Ext.</u>
Alger Maximum (LMF)	906-387-5000	Barbara Bouchard	Randy Fagerberg – 1111
Baraga Maximum (AMF)	906-353-7070	Timothy Luoma	Janice Ansell – 1111
Bellamy Creek Correctional (IBC)	616-527-2510	Ken McKee	Robin Bell - 1104
Boyer Rd/Carson City Temp(OTF)	989-584-3941	Kurt Jones	Jacque Mallory - 6102
Brooks Correctional (LRF)	231-773-9200	Mary Berghuis	Jim Verboncouer - 3248
Carson City Reg (DRF)	989-584-3941	Kurt Jones	Jacque Mallory - 6102
Chippewa Corr (URF)	906-495-2275	Fabian LaVigne	Barb Storey – 3003
Cooper Street Corr (JCS)	517-780-6175	<i>Dennis Dyke</i>	Nick Thomas - 6805
Cotton Correctional (JCF)	517-780-5000	Doug Vasbinder	Ralph Morgan – 5121
Crane Facility (ACF)	517-279-9165	Carol Howes	Jim Lyon - 1518
Deerfield Corr/Ionia Temp. (ITF)	616-527-6320	Carmen Palmer	Kelly Artis - 302
Duane Waters Hospital	517-780-5601	<i>Marie Fletcher (acting)</i>	Liz Solomon - 5968
Egeler Correctional (SMN)	517-780-5600	Nick Ludwick	Bill Denman - 5812
Gus Harrison Corr (ARF)	517-265-3900	David Jamrog	Connie Trevino - 3025
Handlon Corr Facility (MTU)	616-527-3100	John Prelesnik	Roger Gillespie - 215
Hiawatha Correctional (HTF)	906-495-5661	Linda Metrish	Mike Sibbald - 2002
Huron Valley Center (HVC)	734-434-5888	Rosettus Weeks	Duncan Howard 734-434-8814
Huron Valley Men's (HVM)	734-572-9900	Ken Romanowski	Karen Whalen - 9399
Ionia Maximum (ICF)	616-527-6331	Willie Smith	Suzanne Keegstra - 202
Kinross Correctional (KCF)	906-495-2282	Linda Metrish	Kathy Olson - 4202
Lakeland Correctional (LCF)	517-278-6942	Carol Howes	Jim Lyon -1518 -
Macomb Correctional (MRF)	586-749-4900	Hugh Wolfenbarger	Cnolia Redmond - 102
Marquette Prison (MBP)	906-226-6531	Gerald Hofbauer	Renea Hoerner - 1821
Michigan Youth Correctional(MYC)	231-745-9711	Frank Elo	Cathy Kailing - 302
Mid-Michigan Correctional (STF)	989-681-6444	Paul Renico	Kristin Sigafoose - 7030
Mound Correctional (NRF)	313-368-8300	Andrew Jackson	Frank Konieczki – 2167
Muskegon Correctional (MCF)	231-773-3201	John Cason	Marilyn Tucker - 226
Newberry Correctional (NCF)	906-293-6200	Jeri-Ann Sherry	Jerry Carnes - 0009
Oaks Correctional (ECF)	231-723-8272	Dave Gundy	Rick Sharp -1001
Ojibway Correctional (OCF)	906-787-2217	Terry Sherman	Carrie Yon - 105
Parnall Correctional (SMT)	517-780-6100	Harold White	Sal Ahmed - 6309
Parr Highway/Adrian Temp.(ATF)	517-263-3500	David Jamrog	Connie Trevino - 3025
Pine River Correctional (SPR)	989-681-6668	Jan Trombley	Larianne Kipp - 8009
Pugsley Correctional (MPF)	231-263-5253	Tom Phillips	Eric Smith - 1112
Riverside Correctional (RCF)	616-527-0110	Carmen Palmer	Shawn Brewer - 103
Ryan Correctional (RRF)	313-368-3200	Raymond Booker	Rita Crittenden - 1184
Saginaw Correctional (SRF)	989-695-9880	Blaine Lafler	Ed Rosek - 1110
Scott Correctional (SCF)	734-459-7400		Y'von Forehand – 375
Southern Michigan (JMF)	517-780-6000	Sherry Burt	Gordon MacLane - 6597
Special Alternative Incarc. (SAI)	734-475-1368	Bruce Curtis	Mike Winters
St. Louis Correctional (SLF)	989-681-6444	Paul Renico	Kristin Sigafoose - 7030
Standish Maximum (SMF)	989-846-7000	Thomas Birkett	Barb Hilborn - 1113
State Prison of So Mi (SMI)	517-780-6000	closed	closed
Straits Corr/Chippewa Temp (KTF)	906-495-5674	Fabian LaVigne	Barb Storey - 3003
Thumb Correctional (TCF)	810-667-2045	Millicent Warren	Margaret Topham 202
West Shoreline/Muskegon Temp(MTF)	231-773-1122	Mary Berghuis	Jim Verboncouer - 3248
Western Wayne (WCF)	734-459-2500	Clarice Stovall	Felipe Perea - 285